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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,016	12/13/2001	Timothy Frederick Thomas	LL-111-R &D	2794
7590	07/12/2005		EXAMINER	
KILPATRICK STOCKTON LLP 1001 WEST FOURTH STREET WINSTON-SALEM, NC 27101			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/022,016	THOMAS ET AL.
	Examiner	Art Unit
	Gregory Pickett	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 March 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20,22,23,25-35 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20,22,23,25-35 and 37-42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 December 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/3/05</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 1-20, 22, 23, 25-35, 37-42 is withdrawn in view of the newly discovered reference(s) to Brewer (US 197,760). Rejections based on the newly cited reference(s) follow.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1, 3, 4, 6, 7, 10-16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer (US 197,760; provided by applicant) in view of Keaveney et al (US 5,938,018; previously supplied to applicant) and Funderburk et al (US 6,726,006; previously supplied to applicant).

Regarding claims 1, 6, 10, and 12, Brewer discloses a package (Figures 1 & 2) for tobacco comprising a container body **A** with a unitary side panel, a separation member **D** for dividing the internal space into first and second compartments **E**, each compartment having an opening defined by an edge (as shown), and a first lid **B** hingedly attached to the body diametrically opposite a hinge for second lid **C**, said lids covering the openings. Brewer contains loose tobacco.

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Brewer lacks, or does not expressly disclose cigarettes, a plurality of side body panels, or sealing layers affixed to the edges of the compartments for sealing the compartments at a pressure less than atmospheric.

Keaveney et al discloses a rectangular shape for retaining pre-rolled cigarettes or loose tobacco (see for example the Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the container of Brewer in a rectangular shape (thereby forming a plurality of side body panels) in order to accommodate pre-rolled cigarettes. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Brewer-Keaveney merely lacks the sealing layer with the compartments sealed at a pressure less than atmospheric.

Funderburk et al discloses a sealing layer **234** affixed to the opening of the container body (Col. 6, lines 18-23) and vacuum sealing (i.e. at pressure less than atmospheric) for maintaining freshness (see Col. 7, lines 62-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Brewer-Keaveney with a sealing layer and vacuum sealing, as taught by Funderburk, in order to maintain the freshness and shelf life of the cigarettes.

As to claims 3 and 4, Funderburk et al discloses a metal foil sheet material (see Col. 6, lines 18-24).

As to claims 7 and 15, Funderburk et al teaches integral molding of low permeability, polypropylene material and it would have been obvious to form the body of

Brewer-Keaveney-Funderburk in such a manner in order to reduce the number of steps for assembly.

As to claim 11, Keaveney et al discloses a hinge 18 of flexible sheet material and It would have been obvious to one of ordinary skill in the art at the time the invention was made to use this hinge type in the package of Brewer-Keaveney-Funderburk in order to reduce the cost of the hinge.

As to claim 13, Keaveney et al discloses lid 14 having a peripheral flange and a shoulder on body 12 (see Figures 1b, 4, 5a, and 5b) and It would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature into the package of Brewer-Keaveney-Funderburk in order to have a smooth exterior.

As to claim 14, Brewer-Keaveney-Funderburk discloses the claimed invention except for the metal lids. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the lids from a metal material in order to provide a reflective surface. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

As to claim 16, Funderburk et al discloses a cutout 225 for grasping the lip of the lid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature into the package of Brewer-Keaveney-Funderburk in order to facilitate grasping of the lip of the lid.

As to claims 19 and 20, Funderburk et al discloses tab 236 integral with sealing layer 234.

4. Claims 2, 22, 23, 25-27, 30, 33-35, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer-Keaveney-Funderburk as applied to claim 1 above, and further in view of Clemens (US 3,007,623; previously supplied to applicant).

Regarding claim 2, Brewer-Keaveney-Funderburk discloses the claimed invention except for the dual brands of cigarettes.

Clemens discloses a package 78 with dual brands of cigarettes (see Col. 1, lines 14-17). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Brewer-Keaveney-Funderburk with dual brands of cigarettes as taught by Clemens in order to offer the package to smokers who prefer to alter the types of cigarettes smoked.

Regarding claims 22, Brewer-Keaveney-Funderburk-Clemens, as applied to claim 2 above, discloses the claimed invention.

As to claims 23, 26, and 27, Funderburk et al teaches integral molding of low permeability, polypropylene material and it would have been obvious to form the body of Brewer-Keaveney-Funderburk-Clemens in such a manner in order to reduce the number of steps for assembly.

As to claim 25, Keaveney et al discloses a hinge 18 of flexible sheet material and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use this hinge type in the package of Brewer-Keaveney-Funderburk-Clemens in order to reduce the cost of the hinge.

As to claim 30, Keaveney et al discloses lid **14** having a peripheral flange and a shoulder on body **12** (see Figures 1b, 4, 5a, and 5b) and It would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature into the package of Brewer-Keaveney-Funderburk-Clemens in order to have a smooth exterior.

As to claims 33 and 34, Brewer-Keaveney-Funderburk-Clemens discloses the claimed invention except for the aluminum lids. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the lids from a metal material in order to provide a reflective surface. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. The rolling of the lid edges was common practice when stamping an article in order to prevent sharp edges.

Regarding claims 35 and 38, Brewer-Keaveney-Funderburk-Clemens, as applied to claim 2, inherently discloses the claimed method by its formation.

As to claim 37, Brewer-Keaveney-Funderburk-Clemens does not expressly disclose insertion and affixing steps performed substantially simultaneously. It would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the claimed steps simultaneously in order to reduce the steps required for fabrication. Performing similar steps simultaneously is rudimentary in nature and requires only routine skill in the art.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer-Keaveney-Funderburk as applied to claim 1 above, and further in view of Moore (US 2,185,604; previously supplied to applicant).

Brewer-Keaveney-Funderburk discloses the claimed invention except for the further separation member.

Moore discloses separation member **34** used to hold the cigarettes against shifting and additionally providing lateral rigidity to the package (see Col. 3, lines 9-12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Brewer-Keaveney-Funderburk with additional separation members in order to increase lateral stability of the package and increase the number of cigarettes retained.

6. Claims 8, 9, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer-Keaveney-Funderburk as applied to claim 7 above, and further in view of Fletcher (US 3,062,365; provided by applicant).

Regarding claims 8 and 9, Brewer-Keaveney-Funderburk, as applied to claim 7 above, discloses the claimed invention except for the plurality of parallel protrusions.

Fletcher discloses a package **1** with a plurality of parallel protrusions **25** which are ridges and used to separate the cigarettes into individual compartments in order to track the number of cigarettes for maintaining a smoking quota (see Col. 1, lines 33-39). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Brewer-Keaveney-Funderburk with protrusions as

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taught by Fletcher in order to enable tracking the number of cigarettes for maintaining a smoking quota.

Regarding claims 39 and 40, the package of Brewer-Keaveney-Funderburk-Fletcher, as applied to claim 8 above, discloses the claimed invention.

7. Claims 17, 18, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer-Keaveney-Funderburk-Fletcher as applied to claim 8 above, and further in view of Moore (US 2,185,604; previously supplied to applicant).

Regarding claims 17 and 41, Brewer-Keaveney-Funderburk-Fletcher discloses the claimed invention except for the divider members.

Moore discloses divider member 34 used to hold the cigarettes against shifting and additionally providing lateral rigidity to the package (see Col. 3, lines 9-12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Brewer-Keaveney-Funderburk-Fletcher with additional divider members in order to increase lateral stability of the package and increase the number of cigarettes retained.

As to claims 18 and 42, Moore discloses score lines 37.

8. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer-Keaveney-Funderburk-Clemens as applied to claim 22 above, and further in view of Fletcher (US 3,062,365; provided by applicant).

Brewer-Keaveney-Funderburk-Clemens discloses the claimed invention except for the plurality of parallel protrusions.

Fletcher discloses a package **1** with a plurality of parallel protrusions **25** which are ridges and used to separate the cigarettes into individual compartments in order to track the number of cigarettes for maintaining a smoking quota (see Col. 1, lines 33-39). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Brewer-Keaveney-Funderburk with protrusions as taught by Fletcher in order to enable tracking the number of cigarettes for maintaining a smoking quota.

9. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer-Keaveney-Funderburk-Clemens as applied to claim 22 above, and further in view of Moore (US 2,185,604; previously supplied to applicant).

Brewer-Keaveney-Funderburk-Clemens discloses the claimed invention except for the further separation member.

Moore discloses separation member **34** used to hold the cigarettes against shifting and additionally providing lateral rigidity to the package (see Col. 3, lines 9-12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Brewer-Keaveney-Funderburk-Clemens with additional separation members in order to increase lateral stability of the package and increase the number of cigarettes retained.

Response to Arguments

Applicant's arguments, see amendment, filed 13 October 2004, with respect to the rejection(s) of claim(s) 1-20, 22, 23, 25-35, and 37-42 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the newly supplied reference, Brewer (US 197,760; supplied by applicant).

Conclusion

10. As the examiner presents new grounds of rejection, this Office Action is made **NON-FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GP
Greg Pickett
Examiner

29 June 2005

Mickey Yu
Mickey Yu
Supervisory Patent Examiner
Group 3700